

Attorney Docket No. 0023.0017
Application No.: 10/693,082
Reply to Office Action filed May 18, 2006

REMARKS

Claims 1-60 are pending in the application, with claims 1-34, 39-48, and 51-60 having been withdrawn from consideration by the Examiner.

Initially, Applicant notes that the Examiner has made the election of species requirement final. Applicant maintains the position that the election of species requirement is improper for at least the reasons set forth in the Response filed on November 16, 2005. Further, Applicant reserves the right to petition the propriety and/or finality of the election of species.

The drawings were objected to under 37 CFR 1.83(a) for allegedly not showing every feature of the claims. The Examiner alleged the locking means recited in claim 35 are not shown in the drawings. Applicant respectfully traverses this objection.

As disclosed in paragraph [82] of the specification, the locking device illustrated in the embodiment of FIGS. 11A and 11B is similar to the locking device shown in and described with respect to FIGS. 8A and 8B. Therefore, although the embodiment of FIGS. 11A and 11B does not renumber the locking device for purposes of clarity, the locking means recited in claim 35 is present in FIGS. 11A and 11B as identified with respect to FIGS. 8A and 8B and described in connection therewith. Accordingly, Applicant requests that the objection to the drawings be withdrawn.

The disclosure was objected to because paragraph [82] allegedly does not describe how the device of FIGS. 11A-11B works. Applicant respectfully traverses this objection.

Applicant submits that FIGS. 11A and 11B illustrate the components of a butterfly needle, and FIGS. 12A and 12B illustrate those components in assembled

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configurations. Furthermore, the operation of the butterfly needle assembly is sufficiently described in paragraph [82] (including the reference to the locking device described in connection with FIGS. 8A and 8B) such that a person of ordinary skill in the art would understand how the device of FIGS. 11A, 11B, 12A, and 12B works. If the Examiner still fails to understand how the device works, Applicant respectfully requests that the Examiner ask more specific and pointed questions regarding what is not understood so that Applicant can appropriately address such issues. Otherwise, Applicant respectfully requests that the objection to the specification be withdrawn.

Claims 37, 38, 49, and 50 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. The Examiner alleges that the terms "butterfly" and "moth" are indefinite because "there are hundreds of species of butterflies and moths." Applicant respectfully traverses this rejection and submits that the Examiner is improperly equating breadth with indefiniteness.

As set forth in M.P.E.P. § 2173.04, "breadth of a claim is not to be equated with indefiniteness." *In re Miller*, 441 F.2d 689, 169 U.S.P.Q. 597 (C.C.P.A. 1971). "If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. § 112, second paragraph." M.P.E.P. § 2173.04.

The originally-filed claims, for example, claims 3, 4, 15, 16, 28, 29, 37, 38, 49, and 50, recite that a butterfly needle or butterfly needle assembly with wings that resemble wings of a butterfly or moth. That is, the wings can resemble any butterfly or moth. Consistent with the scope of these claims, the disclosure describes and

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illustrates exemplary butterfly and moth configurations. Paragraph [66]; FIGS. 3A-3D.

With regard to this feature, Applicant does not intend the invention to be of a scope different from that recited in the claims. Accordingly, Applicant submits that claims 37, 38, 49, and 50 comply with § 112, second paragraph, and the rejection under § 112 should be withdrawn.

Claims 35-38, 49, and 50 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,501,672 to Firth et al ("Firth"). Applicant respectfully traverses this rejection.

Regarding independent claim 35, Firth does not disclose or suggest a butterfly needle assembly comprising, inter alia, a needle having a needle hub with integral wings extending radially from said needle hub and a shield having side tracks, wherein the integral wings extend through the side tracks. To the contrary, Firth discloses a wingless needle 107 in a body member 110 that includes integral butterfly wings 108a, 108b extending therefrom. The body member 110 does not have side tracks, and thus the butterfly wings 108a, 108b do not extend through such tracks in the body member 110. Therefore, the body member 110 does not include side tracks through which wings extend from the needle 107, as recited in claim 35.

Accordingly, Applicant submits that the § 102 rejection based on Firth should be withdrawn.

Claims 36-60 depend from independent claim 35 and are therefore allowable for at least the same reasons that claim 35 is allowable, as well as for their own unique features. Applicant respectfully requests that withdrawn claims 39-48 and 51-60 be re-joined at this time as being dependent upon an allowable generic claim.

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In view of the foregoing amendments and remarks, Applicant respectfully requests prompt examination of this application and timely allowance of the pending claims.

The Office Action contains characterizations of the claims and the related art, with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

If the Examiner believes a telephone conversation might advance prosecution, the Examiner is invited to call Applicant's undersigned attorney at 410-414-3056.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 50-2960.

Respectfully submitted,

Dated: May 18, 2006

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